

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

MARIO TORRES,  
Petitioner,

v.

SCOTT KERNAN,  
Respondent.

Case No. [20-cv-03159-PJH](#)

**ORDER FOR RESPONDENT TO  
SHOW CAUSE**

Petitioner, a former state prisoner, filed a pro se writ of habeas corpus pursuant to 28 U.S.C. § 2254. The petition was stayed so petitioner could exhaust further claims. The stay has been lifted and petitioner has filed an amended petition.

**DISCUSSION**

**STANDARD OF REVIEW**

This court may entertain a petition for writ of habeas corpus “in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2254(a); *Rose v. Hodges*, 423 U.S. 19, 21 (1975). Habeas corpus petitions must meet heightened pleading requirements. *McFarland v. Scott*, 512 U.S. 849, 856 (1994). An application for a federal writ of habeas corpus filed by a prisoner who is in state custody pursuant to a judgment of a state court must “specify all the grounds for relief available to the petitioner ... [and] state the facts supporting each ground.” Rule 2(c) of the Rules Governing § 2254 Cases, 28 U.S.C. § 2254. “[N]otice’ pleading is not sufficient, for the petition is expected to state facts that point to a ‘real possibility of constitutional error.’”

1 Rule 4 Advisory Committee Notes (quoting *Aubut v. Maine*, 431 F.2d 688, 689 (1st Cir.  
2 1970)).

### 3 **LEGAL CLAIMS**

4 As grounds for federal habeas relief, petitioner asserts that: (1) his plea agreement  
5 was violated; (2) he was improperly resentenced; and (3) restitution was improperly  
6 instituted at his resentencing. Liberally construed, these claims are sufficient to require a  
7 response.

### 8 **CONCLUSION**

9 1. The clerk shall serve by electronic mail a copy of this order on the Attorney  
10 General of the State of California at **SFAWTParalegals@doj.ca.gov**. The clerk also  
11 shall serve a copy of this order on petitioner by regular mail. Respondent can view the  
12 petition on the electronic docket (Docket No. 14).

13 2. Respondent shall file with the court and serve on petitioner, within sixty (60)  
14 days of the issuance of this order, an answer conforming in all respects to Rule 5 of the  
15 Rules Governing Section 2254 Cases, showing cause why a writ of habeas corpus  
16 should not be granted. Respondent shall file with the answer and serve on petitioner a  
17 copy of all portions of the state trial record that have been transcribed previously and that  
18 are relevant to a determination of the issues presented by the petition.

19 If petitioner wishes to respond to the answer, he shall do so by filing a traverse  
20 with the court and serving it on respondent within twenty-eight (28) days of his receipt of  
21 the answer.

22 3. Respondent may file a motion to dismiss on procedural grounds in lieu of  
23 an answer, as set forth in the Advisory Committee Notes to Rule 4 of the Rules  
24 Governing Section 2254 Cases. If respondent files such a motion, it is due sixty (60)  
25 days from the date this order is entered. If a motion is filed, petitioner shall file with the  
26 Court and serve on respondent an opposition or statement of non-opposition within  
27 twenty-eight (28) days of receipt of the motion, and respondent shall file with the court  
28 and serve on petitioner a reply within fourteen (14) days of receipt of any opposition.

**IT IS SO ORDERED.**

/s/ Phyllis J. Hamilton

PHYLLIS J. HAMILTON  
United States District Judge